

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

COACH, INC., etc., et al.,

Plaintiffs,

v.

ASIA PACIFIC TRADING COMPANY,  
INC., etc., et al.,

Defendants.

No. CV 09-0035-PSG (PLAx)

**ORDER RE: PLAINTIFFS' MOTION FOR  
PRODUCTION OF DOCUMENTS**

Plaintiffs in this action allege that defendants have infringed on plaintiffs' design pattern on sunglasses. Plaintiffs served requests for production of documents on defendant Sunglass Experts (from whom plaintiffs' investigators purchased allegedly infringing sunglasses); Sunglass Experts refused to provide documents identifying the suppliers, manufacturers and/or sources of the allegedly infringing products, and asserted that since plaintiffs have stated that they seek the supplier or manufacturer information to pursue other lawsuits, certain documents would be provided only after entry of a protective order. Sunglass Experts also contends that it already produced responsive (albeit redacted) documents on July 24, 2009<sup>1</sup>, and that plaintiffs have not

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<sup>1</sup> Plaintiffs represent that these documents included invoices and shipment documents concerning the infringing products, but that the supplier and customer information was redacted. Supplemental Declaration of Cindy Chan, ¶¶ 2-3.

1 stated how that production is deficient. This Motion to Compel followed. The Court has concluded  
2 that oral argument will not be of material assistance in determining plaintiffs' Motion. Accordingly,  
3 the hearing scheduled for September 1, 2009, is **ordered off calendar** (see Local Rule 7-15).

4 Sunglass Experts has asserted a number of objections to producing the requested  
5 documents. The objection central to this Motion, however, is the relevance of the requested  
6 documents. Under Fed.R.Civ.P. 26(b)(1), discovery is permitted of "any nonprivileged matter that  
7 is relevant to any party's claim or defense." Federal Rule of Civil Procedure 26(b) is to be "liberally  
8 interpreted to permit wide-ranging discovery of information," even if that information is not  
9 ultimately admitted at trial. See Comcast of Los Angeles, Inc. v. Top End International, Inc., 2003  
10 WL 22251149, at \*2 (C.D. Cal. July 2, 2003); see also Fed.R.Civ.P. 26(b)(1) ("[r]elevant  
11 information need not be admissible at the trial if the discovery appears reasonably calculated to  
12 lead to the discovery of admissible evidence."). The burden is on Sunglass Experts to show that  
13 discovery should not be allowed (Comcast, at \*2, citing Blankenship v. Hearst Corp., 519 F.2d  
14 418, 429 (9th Cir. 1975)); it is not up to Sunglass Experts to decide what plaintiffs need to  
15 prosecute this action. The information sought by plaintiffs here -- information as to the  
16 manufacturers, sources and/or suppliers of the allegedly infringing products -- is relevant to  
17 plaintiffs' claims, and must be produced. This discovery could lead to information about potential  
18 witnesses, as well as information about sales of the allegedly infringing goods, and possibly to  
19 Sunglass Experts' defense of waiver. Indeed, even if the manufacturing of the goods occurred  
20 overseas, it is undisputed in this Motion that sales by Sunglass Experts of the allegedly infringing  
21 products were occurring in the United States. Further, Sunglass Experts' argument that the time  
22 to add new defendants has passed and therefore information about their suppliers or  
23 manufacturers is irrelevant, fails. It is not the role of the Court in this Motion to determine what  
24 evidence the District Judge will actually allow in at a trial in this case, or whether the District Judge  
25 will permit plaintiffs to add new defendants at a later date. See, e.g., Colonial Life & Accident  
26 Insur. Co. v. Superior Court of Los Angeles County, 31 Cal.3d 785, 791, n. 8 (1982) (quoting  
27 Pacific Tel. & Tel. Co. v. Superior Court, 2 Cal.3d 161, 172-73 (1970) ("[Courts] may appropriately  
28 give the applicant [for discovery] substantial leeway, especially when the precise issues of the

1 litigation of the governing legal standards are not clearly established [citation]; a decision of  
2 relevance for purposes of discovery is in no sense a determination of relevance for purposes of  
3 trial.”) (brackets in original)).

4 As for Sunglass Experts’ objection that the requests demand production of confidential  
5 and/or protected documents without the protection of a protective order, the Court notes that it  
6 recently denied entry of a stipulated protective order, but advised the parties concerning changes  
7 that could be made to render a protective order acceptable. To date, the parties have failed to  
8 submit a revised proposed order. Sunglass Experts represents that it intended to disclose the  
9 redacted information upon entry of the protective order, and it anticipates that a revised order will  
10 be filed with the Court. See Sunglass Experts’ Supplemental Memorandum, at 3. Nevertheless,  
11 plaintiffs now contend that Sunglass Experts has not explained or shown good cause why the  
12 requested documents should be treated as confidential and/or protected. Sunglass Experts  
13 responds that plaintiffs are seeking this information to pursue separate actions against the  
14 suppliers and manufacturers, and that accordingly discovery of this information should be denied,  
15 or at a minimum subject to a protective order limiting use to this action. Plaintiffs assert that “it is  
16 not improper to use information acquired through discovery to initiate a new lawsuit.” Plaintiffs’  
17 Supplemental Memorandum, at 3. The Court disagrees with plaintiffs, as discovery of information  
18 for use in another action is not relevant to plaintiffs’ “claim or defense” in this action. The identities  
19 of Sunglass Experts’ suppliers, manufacturers and sources, as well as the content of any  
20 agreements it has with those entities, is proprietary information that should qualify for protection.  
21 While the Court will order production, it will be subject to an appropriate protective order limiting  
22 use to this action. Accordingly, Sunglass Experts must produce responsive unredacted  
23 documents identifying its manufacturers and suppliers (Requests Nos. 8 and 9).

24 As for Request No. 18, seeking all Agreements with suppliers, vendors, and/or  
25 manufacturers for the purchase of the allegedly infringing product, plaintiffs assert that to date,  
26 only redacted invoices and shipment documents were provided, and no agreements with suppliers  
27 concerning the allegedly infringing products were produced. Chan Dec., ¶¶ 3-4. Sunglass Experts  
28 represents that it will produce the responsive purchase orders for the two products after the entry

1 of an enforceable protective order. It says nothing of its agreements with suppliers and  
 2 manufacturers. The Court finds that **all** responsive documents must be produced, subject to a  
 3 protective order.

4 The remaining objections are also rejected by the Court. Sunglass Experts' objection that  
 5 the requests are unduly burdensome lacks substantiation. It is well-established that the burden  
 6 is on the objecting party to show grounds for failing to provide the requested discovery. See, e.g.,  
 7 Smith v. B & O Railroad Co., 473 F.Supp. 572, 585 (D. Md. 1979); Sherman Park Community  
 8 Association v. Wauwatosa Realty, 486 F.Supp. 838, 845 (E.D. Wis. 1980); Laufman v. Oakley  
 9 Building and Loan Co., 72 F.R.D. 116, 121 (S.D. Ohio 1976). Sunglass Experts cannot simply  
 10 invoke generalized objections; rather, with respect to plaintiffs' discovery requests, Sunglass  
 11 Experts

12 must show specifically how, despite the broad and liberal construction  
 13 afforded the federal discovery rules, each [request] is not relevant or  
 14 how each [request] is overly broad, burdensome or oppressive by  
 submitting affidavits or offering evidence revealing the nature of the  
 burden.

15 Roesberg v. Johns-Manville Corp., 85 F.R.D. 292, 296 (E.D. Pa. 1980) (citations omitted); Wirtz  
 16 v. Capitol Air Service, Inc., 42 F.R.D. 641, 643 (D. Kan. 1967). For a burdensomeness argument  
 17 to be sufficiently specific to prevail, it must be based on affidavits or other evidence showing the  
 18 exact nature of the burden. Kansas-Nebraska Natural Gas v. Marathon Oil Co., 109 F.R.D. 12,  
 19 24 (D. Neb. 1983) (party objecting to production requests must specify why the requests are  
 20 objectionable); Roesberg, 85 F.R.D. at 296-97. Sunglass Experts' unsupported objections of  
 21 burdensomeness are insufficient.

22 Next, while the Court recognizes that in some instances a discovery request may be so  
 23 ambiguous as to not allow a response (see, e.g., Dubin v. E.F. Hutton Group Inc., 125 F.R.D. 372,  
 24 376 (S.D.N.Y. 1989)), such is not the case here. Rather, the Court finds that the terms used by  
 25 plaintiffs in the Requests at issue herein are not presented in a vague or ambiguous manner, and  
 26 can readily be responded to using the common and ordinary meanings of those terms. They do  
 27 not involve matters of opinion, are not dependent on subjective standards of measurement, and  
 28 provide a reasonably clear indication of the information being sought.

1 Further, to the extent Sunglass Experts complains that the requests seek documents  
2 outside of their custody or control, they must respond based on information currently in their  
3 possession, custody or control. Property is within a party's possession, custody or control whether  
4 the party has actual possession thereof, or the right to obtain the property on demand. In re  
5 Bankers Trust Co., 61 F.3d 465, 469 (6th Cir. 1995). A party is not in control of documents when  
6 the requesting party has an equal ability to obtain them from public sources. See Estate of Young  
7 v. Holmes, 134 F.R.D. 291, 294 (D. Nev. 1991).

8  
9 **CONCLUSION**

10 Plaintiffs' Motion is **granted** as set forth above. **No later than September 8, 2009**,  
11 defendant Sunglass Experts shall serve on plaintiffs all documents responsive to Requests Nos.  
12 8, 9 and 18, without redaction. To the extent Sunglass Experts desires that the ordered production  
13 be made subject to a protective order limiting use of the documents to this action, a revised  
14 proposed stipulated protective order shall be submitted to the Court **no later than September 1,**  
15 **2009**. The parties shall work together in a good faith effort to prepare and submit a proposed  
16 protective order that incorporates the issues set forth in the Court's August 3, 2009, Memorandum  
17 and Order. To the extent the parties cannot fully agree on the terms of the protective order, each  
18 party shall submit its own proposed protective order **no later than September 1, 2009**, along with  
19 an explanation of the terms as to which the parties cannot come to agreement. The Court will then  
20 enter an order that will control this case.

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23 DATED: August 25, 2009



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25 PAUL L. ABRAMS  
26 UNITED STATES MAGISTRATE JUDGE  
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